

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 285 be amended to read as follows:

- 1 Page 19, between lines 34 and 35, begin a new paragraph and insert:
2 "SECTION 10. IC 6-2.5-6-9, AS AMENDED BY P.L.162-2006,
3 SECTION 23, AND AS AMENDED BY P.L.184-2006, SECTION 2,
4 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) In determining the
6 amount of state gross retail and use taxes which a retail merchant must
7 remit under section 7 of this chapter, the retail merchant shall, subject
8 to subsections (c) and (d), deduct from the retail merchant's gross retail
9 income from retail transactions made during a particular reporting
10 period, an amount equal to the retail merchant's receivables which:
11 (1) resulted from retail transactions in which the retail merchant
12 did not collect the state gross retail or use tax from the purchaser;
13 (2) resulted from retail transactions on which the retail merchant
14 has previously paid the state gross retail or use tax liability to the
15 department; and
16 (3) were written off as an uncollectible debt for federal tax
17 purposes under Section 166 of the Internal Revenue Code during
18 the particular reporting period.
19 (b) If a retail merchant deducts a receivable under subsection (a)
20 and subsequently collects all or part of that receivable, then the retail
21 merchant shall, subject to subsection (d)(6), include the amount
22 collected as part of the retail merchant's gross retail income from retail
23 transactions for the particular reporting period in which the retail
24 merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after ~~June 30, 2007~~ December 31, 2006. As used in this subsection, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%)) *or a relationship described in Section 267(b)(11) of the Internal Revenue Code.*

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

(1) The deduction does not include interest.

(2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to:

(A) exclude:

~~(A)~~ (i) financing charges or interest;

~~(B)~~ (ii) sales or use taxes charged on the purchase price;

~~(C)~~ (iii) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

~~(D)~~ (iv) expenses incurred in attempting to collect any debt; and

~~(E)~~ (v) repossessed property; and

(B) include amounts previously deducted for federal income tax purposes under Section 165 of the Internal Revenue Code by a retail merchant or a member of the retail merchant's affiliated group (as defined in subsection (c)) and not previously allowed as a deduction under this section.

(3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were

1 required to file a federal income tax return.

2 (4) If the amount of uncollectible receivables claimed as a
3 deduction by a retail merchant for a particular reporting period
4 exceeds the amount of the retail merchant's taxable sales for that
5 reporting period, the retail merchant may file a refund claim
6 under IC 6-8.1-9. However, the deadline for the refund claim shall
7 be measured from the due date of the return for the reporting
8 period on which the deduction for the uncollectible receivables
9 could first be claimed.

10 (5) If a retail merchant's filing responsibilities have been assumed
11 by a certified service provider (as defined in IC 6-2.5-11-2), the
12 certified service provider may claim, on behalf of the retail
13 merchant, any deduction or refund for uncollectible receivables
14 provided by this section. The certified service provider must
15 credit or refund the full amount of any deduction or refund
16 received to the retail merchant.

17 (6) For purposes of reporting a payment received on a previously
18 claimed uncollectible receivable, any payments made on a debt or
19 account shall be applied first proportionally to the taxable price
20 of the property and the state gross retail tax or use tax thereon,
21 and secondly to interest, service charges, and any other charges.

22 (7) A retail merchant claiming a deduction for an uncollectible
23 receivable may allocate that receivable among the states that are
24 members of the streamlined sales and use tax agreement if the
25 books and records of the retail merchant support that allocation."

26 Renumber all SECTIONS consecutively.

(Reference is to ESB 285 as printed April 10, 2009.)

Representative Welch